

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2325 OF 1999

Shri Ajay Tarachand Savla of
Mumbai, Indian Inhabitant
carrying on business as a sole
proprietor in the name and style
of M/s.81 Electronics (India)
having his office at 16,
Kishore Mansion, 211-C,
Dr.B.A. Road, Matunga
Mumbai - 400 019

.. Petitioner.

V/s.

1. Union of India, by its
Secretary to the Finance
Department, New Delhi.

2. Shri B.K. Bakshi,
Commissioner of Customs,
having his office at Air
Cargo Complex, Sahar,
Andheri (E), Mumbai 99.

3. Shri A.C. Buck, Commissioner
of Customs (Prev.)/Designated
Authority (KVSS-98) having
his office at New Customs
House, Ballard Estate,
Mumbai - 400 038

.. Respondents.

Mr.Pheroze Colabawala with Mr.Mukund Madekar i/b.
M/s.Madekar & Co. for the petitioner.

Mr.P.S. Jetly i/b. Mr.R.N. Bandopadhyay for the
respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 2ND MAY, 2006.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

The petitioner, in effect, seeks refund of
the sum of Rs.1,50,000/- that he paid pursuant to the

certificate dated 22nd December, 1998 under the Finance (No.2) Act, 1998 in respect of Kar Vivad Samadhan Scheme 1998 and Kar Vivad Samadhan Scheme Rules, 1998.

2. The facts in brief may be stated thus to appreciate the controversy raised in the writ petition.

3. The petitioner is a sole proprietor of M/s.81 Electronics (India). The sole proprietary concern carries on business of importing electronic goods. The sole proprietary concern imported three consignments of compact disc players, model C.D.P.-1100 comprising of 478 pieces each from Hong Kong by a flight No.SR-171 under three Air Way Bills all dated 7th February, 1996. The petitioners Clearing House Agent filed three bills of entry all dated 9th February, 1996 for clearance of the said goods against the special import licence. The declared value of the equipments imported by the petitioner's sole proprietary concern was found to be low and the case was taken up for investigation. A show-cause notice dated 28th May, 1996 was issued to the petitioner, his sole proprietary concern and few others to show cause as to why the customs duty amounting to Rs.2,81,958/- in respect of the

petitioners consignments be not recovered and why penal action be not taken against them. On 28th July, 1997, the Commissioner of Customs confirmed the duty amounting to Rs.2,81,958/- and imposed penalty of Rs.2,00,000/- on petitioner's sole proprietary concern and penalty of Rs.3,00,000/- on the petitioner. The petitioner preferred an appeal to CEGAT against the order-in-original dated 28th July, 1997. As per the interim order passed by the Tribunal, the petitioner deposited the demand to the extent of Rs.98,000/- and Rs.1,25,000/- towards penalty.

4. In the meanwhile, on 1st September, 1998, vide Finance (No.2) Act, 1998, Kar Vivad Samadhan Scheme 1998 ('KVSS' for short) came into force that remained operative until 31st January, 1999.

5. The petitioner being desirous of availing of the benefits of KVSS made declaration on his behalf. The declaration was also made on behalf of its sole proprietary concern.

6. On receipt of the said declarations, the Designated Authority issued two certificates both dated 22nd December, 1998 calling upon the petitioner to make payment of Rs.1,50,000/- towards penalty and

the petitioner's sole proprietary concern M/s.81 Electronics (India) to make payment of Rs.1,40,979/- towards duty. The petitioner as well as the sole proprietary concern made the payment as per the said certificates.

7. Now, by means of this writ petition filed in the month of July, 1999, the petitioner seeks refund of Rs.1,50,000/- that was paid by him.

8. Two grounds have been set up in support of the writ petition: (one) that the petitioner and the sole proprietary concern are one entity and, therefore, both could not have been asked to make payment of penalty. The contention was buttressed by the circular dated 9th December, 1998 issued by the concerned authority providing therein that once the principal noticee settles his case under the KVSS it will provide immunity to all co-noticees also; (two) that the recovery of sum of Rs.1,50,000/- from the petitioner under the certificate dated 22nd December, 1998 is without authority of law and violative of Article 265 of the Constitution of India.

9. The aforesaid contentions are devoid of any merit and substance. It over-looks Section 93 of Finance (No.2) Act, 1998. Section 93 reads thus :

"93. Any amount paid in pursuance of a declaration made under section 88 shall not be refundable under any circumstances."

10. That the payment of Rs.1,50,000/- was made by the petitioner pursuant to the certificate dated 22nd December, 1998 is not in dispute. The said certificate reads thus :

"FORM OF CERTIFICATE OF INTIMATION UNDER SEC.90(1)
THE FINANCE (NO.2) ACT, 1998 IN RESPECT OF
KAR VIVAD SAMADHAN SCHEME, 1998.

KAR VIVAD SAMADHAN SEHEME RULES, 1998.

FORM 2B

[See Rule 4(b)]

Whereas Mr.Ajay Tarachand Savla (hereinafter referred to as the 'declarant') has filed a declaration under Section 88 of the Finance (No.2) Act, 1998; and whereas the said declaration has been received on 02/11/98 in the office of the designated authority.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 90 of the Finance (No.2) Act, 1998, the designated authority, after consideration of relevant material, hereby determine the following amount payable the declarant towards full and final settlement of his/her/their tax arrears covered by the said declaration under the scheme.

Tax Arrears	Amount of tax arrears declared in Form 1B	Amt.Determined as payable under Sec.88(F) of the Finance (No.2) Act, 1998.	Remarks
	(In Rs.)	(In Rs.)	
(a). Penalty	3,00,000/-	1,50,000/-	
(b). Other than duties/cesses.	-		

The declarant is hereby directed to make payment of the sum payable within 30 days of the date of this certificate."

11. The statutory provision contained in Section 93 being unequivocal disentitles the petitioner from refund of any amount paid in pursuance of a declaration made under Section 88. The aforesaid view find support from the judgment of Supreme Court in the case of Union of India & Others V/s. Onkar S. Kanwar & Others [(2002) 7 Supreme Court Cases 591]. In para 17 of the report, the Supreme Court held thus :

"17. The question now arises whether the Directors/officers are entitled to a refund. Section 93 of the Kar Vivad Samadhan Scheme reads as follows :

'93. Any amount paid in pursuance of a declaration made under Section 88 shall not be refundable under any circumstances.'

Admittedly, in this case, all the officers have paid the amounts in pursuance of the declaration made by them under Section 88. Even if they have paid the amounts under protest they are not entitled to refund. The Directors/officers in Kerala would also not have been entitled to refund by virtue of Section 93. However, Section 93 does not seem to have been pointed out to the High Court of Kerala. As, pursuant to the order of the High Court of Kerala, they have received refund we do not direct that they should repay the amounts to the Revenue."

12. For what we have stated above, the writ petition is liable to be dismissed and is dismissed

accordingly with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)